

REMARKS

The Final Office Action dated March 24, 2004 rejected claims 1 and 2 under 35 U.S.C. § 102 as being anticipated by U.S. Patent 6,137,789 to Honkasalo (hereinafter "Honkasalo"). Claim 3 was rejected under 35 U.S.C. § 103 as being obvious in light of U.S. Patent 6,137,789 to Honkasalo. An Advisory Action was mailed June 24, 2004 indicating non-entry of amendments in the Amendment After Final submitted by Applicants.

Applicants submit a Request for Continued Examination and withdraw the prior Amendment After Final and amend the application.

Claim Rejections under 35 U.S.C. § 102

Claims 1 and 2 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Honkasalo.

To anticipate a claim, the prior art reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants respectfully submit that claims 1 and 2 are not anticipated by Honkasalo for the reason and explanations provided below.

Applicants respectfully submit that Honkasalo does not disclose the limitation "transmitting a message indicative of the rate of said data prior to and independent of data transmission" as found in amended claim 1.

Honkasalo discloses a mobile station that is able to determine a required data rate based on data buffer usage. (Abstract). The mobile station is enabled to autonomously control the data rate during an assigned period for high speed transmission. (Col. 3, lines 45-47). A high speed mobile station requests a number of parallel code channels based on the amount of data stored in a transmit data buffer. (Col. 5, lines 58-60). The base station then assigns a number of parallel code channels up to a maximum number, for a given period of time. The number of channels is also based on the current interference condition in the network. (Col. 5, lines 60-64). The time period is a network parameter and is explicitly signaled to the mobile station by the base station.

(Col. 5, lines 65-67). The mobile then proceeds to transmit on all assigned code channels. (Col. 6, lines 1-2). Applicants respectfully submit that Honkasalo does not disclose “transmitting a message indicative of the rate of said data prior to and independent of data transmission”, as found in amended claim 1.

Applicants also submit that claims 2 and 3 are allowable as depending from an allowable base claim.

Claim Rejections under 35 U.S.C. § 103

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure.” *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that claim 3 is allowable for the same reasons as given above for claim 1.

Additionally, Applicant submits that Honkasalo teaches away from the method used in claim 3. Honkasalo teaches that the mobile station autonomously controls the data rate during an assigned period. (Col. 3, lines 45-47). This teaches away from the limitation of amended claim 1 “transmitting a message indicative of the rate of said data prior to and independent of data transmission”. Thus, the reference teaches away from Applicants’ disclosure.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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By: Roberta A. Young
Roberta A. Young, Reg. No. 53,813
(858) 658-5803

QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, California 92121
Telephone: (858) 658-5787
Facsimile: (858) 658-2502